

EXHIBIT 22

Restore Robotics LLC v Intuitive Surgical

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RESTORE ROBOTICS LLC,)
RESTORE ROBOTICS REPAIRS)
LLC, and CLIF PARKER)
ROBOTICS LLC,)

Plaintiffs,)

vs.)

INTUITIVE SURGICAL, INC.,)
Defendant.)

CIVIL ACTION NO.

5:19-CV-55-TKW-MJF

INTUITIVE SURGICAL, INC.,)
Counterclaimant,)

vs.)

RESTORE ROBOTICS LLC,)
RESTORE ROBOTICS REPAIRS)
LLC,)

Counterclaim Defendants.)

VIDEOTAPED DEPOSITION OF RONALD BAIR, JR.

(Taken by Plaintiff)

May 24, 2021

12:05 p.m. EST

Reported by: Debra M. Druzisky, CCR-B-1848

Restore Robotics LLC v Intuitive Surgical

Page 22

1 substance of what's showing on the screen here?

2 A. Certainly. Most of our EndoWrist
3 instruments were validated and approved with a ten
4 life limit. And this report captures when unique
5 or individual instruments have been used in a
6 manner that exceeds those validated lives.

7 Q. And at some point did Intuitive develop a
8 practice for how they handle the identity of the
9 hospitals on these reports?

10 MS. LENT: Object to the form.

11 THE WITNESS: Could you clarify --

12 BY MR. BERHOLD:

13 Q. Let me ask it a different -- yeah. I'll
14 ask it a different way. Do you recall whether
15 Intuitive did anything in response to these
16 instrument reports?

17 A. Yes, I do.

18 Q. And what was the Intuitive response?

19 A. The Intuitive response changed over time
20 from initial exposure to our better understanding
21 of the process that we should engage in as it
22 related to these instruments where, ultimately, the
23 initial engagement with customers was largely an
24 educational effort around the safety implications
25 of using the equipment beyond its validated lives

Restore Robotics LLC v Intuitive Surgical

Page 23

1 and also a reminder of the limitations of the
2 limited license sold with the da Vinci system and
3 the EndoWrist instruments.

4 MR. BERHOLD: Bailey, can we pull
5 up -- well, take -- can we take down
6 Exhibit 1 and pull up Intuitive 44523?

7 (Whereupon, Bair Deposition
8 Exhibit 2 was marked for
9 identification.)

10 THE CONCIERGE: Here is Exhibit 2.

11 BY MR. BERHOLD:

12 Q. Mr. Bair, do you need a minute to review
13 Exhibit 2?

14 A. Yes. I will take a look. I do have it
15 pulled up, so I can review on my screen.

16 (Whereupon, the document was
17 reviewed by the witness.)

18 THE WITNESS: Okay.

19 BY MR. BERHOLD:

20 Q. So do you recognize Exhibit 2?

21 A. Yes, I do.

22 Q. What is Exhibit 2?

23 A. Exhibit 2 is a reply to an inquiry from a
24 customer representative regarding the use of
25 refurbished instrumentation.

Restore Robotics LLC v Intuitive Surgical

Page 24

1 Q. And it's an E-mail from you to Ms. Harvey
2 of Crescent City?

3 A. That is correct.

4 Q. And is there an attachment?

5 A. There is an attachment. It is a letter
6 signed by our V.P. of regulatory and quality for
7 global markets and our general counsel.

8 MR. BERHOLD: Bailey, can we scroll
9 down to the second page?

10 BY MR. BERHOLD:

11 Q. And what is the purpose of attaching the
12 letter?

13 A. The letter explores the potential safety
14 implications, regulatory and compliance
15 implications, and contractual implications of using
16 third-party refurbished instruments that have not
17 been authorized.

18 Q. And would -- did Intuitive ever send these
19 sorts of letters in response to seeing a hospital
20 appear on the reprogrammed instrument logs?

21 A. Yes.

22 Q. Did Intuitive communicate in any other
23 ways with customers after seeing the hospital
24 appear on the reprogrammed instrument logs --

25 A. There --

Restore Robotics LLC v Intuitive Surgical

Page 25

1 Q. -- besides the letter?

2 A. Sure. The letter was traditionally -- or
3 traditionally may have also been accompanied by
4 communication from Intuitive representatives in the
5 same spirit as the letter.

6 Q. And if Intuitive continued to see
7 reprogrammed instruments for a particular hospital
8 continuing to appear on the reprogrammed instrument
9 log, did Intuitive take any next steps?

10 A. There was an escalation pathway to
11 consider revoking the limited license sold with the
12 da Vinci and EndoWrist instruments if ongoing
13 violation of that license was detected.

14 MR. BERHOLD: Bailey, can we pull
15 down Exhibit 2 and pull up CRMC 10?

16 (Whereupon, Bair Deposition
17 Exhibit 3 was marked for
18 identification.)

19 THE CONCIERGE: Here is Exhibit 3.

20 BY MR. BERHOLD:

21 Q. Mr. Bair, do you want a minute to review
22 Exhibit 3?

23 A. Yes. And I do have it on my screen. I
24 will take a moment to review.

25 (Whereupon, the document was

Restore Robotics LLC v Intuitive Surgical

Page 26

1 reviewed by the witness.)

2 THE WITNESS: Okay.

3 BY MR. BERHOLD:

4 Q. Do you recognize Exhibit 3?

5 A. Yes, I do.

6 Q. What is Exhibit 3?

7 A. Exhibit 3 is the final step of our
8 practice as it relates to violations of the
9 licensing agreement that impact patient safety,
10 which served to effectively terminate the licensing
11 agreement.

12 Q. And what are the consequences of
13 terminating the licensing agreement for the
14 customer?

15 A. I am not a legal professional, but my
16 understanding is the customer would no longer be
17 permitted to purchase licensed or products under
18 that license from Intuitive.

19 Q. So the customer would not be able to
20 purchase new instruments --

21 A. That is correct.

22 Q. -- from Intuitive?

23 A customer wouldn't be able to purchase
24 new accessories from Intuitive?

25 A. That is correct.